In the High Court of Judicature at Madras

Dated: 17/04/2002

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The Hon'ble Mr. Justice R. JAYASIMHA BABU
and
The Hon'ble Mr. Justice A. KULASEKARAN

O.S.A. No. 69 of 1998

S.K.J. Dhanasekar,
No: 2, Lady Madava Road,
Mahalingapuram,
Chennai - 600 034. ... Appellant

-Vs-

S.V.S. Jawaharlal
No: E-1, H.I.G. Flats,
Mogappai,
Chennai - 50. ... Respondent

Appeal under Order XXXVI Rule 11 of Original Side Rules against the order dated 23.12.1997 made in Appl. No: 4113 of 1997.

!For appellant : M/s. K. Yamunan

^For respondent : Mr. Agilesh for
M/s.M. Maninarayanan

:J U D G M E N T

(Judgment of the Court was delivered by R.JAYASIMHA BABU, J.)

The appellant is aggrieved by the refusal of leave to institute a suit in this Court seeking the relief of specific performance of an agreement for the conveyance of land situated outside the jurisdiction of this Court as also the possession of one of the items of the lands, subject matter of the agreement being two items of land.

2. Learned counsel for the appellant submitted that the defendants reside within the jurisdiction of this court and that the agreement was also entered into in this city of Madras and, therefore, the leave ought to have been granted.

3. Counsel placed reliance on the decision of a Division Bench of this Court in the case of Bank of Madurai Ltd. vs. Balaramadoss and Bros. (1985 A.I.R. Madras Page 1) wherein the Court analysed clause 12 of the Letters Patent and held that it consist of three parts, first dealing with suits for land; the second, cases where cause of action has arisen within the

jurisdiction of the Court; and a third category which comprises of all suits wherein the defendants, at the time of commencement of the suit shall dwell or carry on business or personally works for gain.

4. The Supreme Court had occasion to consider clause 12 of the Letters Patent of the Bombay High Court in a recently reported case which is directly in point here. That is the case of Adcon Electronics Pvt. Ltd. vs. Daulut, 2001 (7) SCC 698. At paragraph 7 of that judgment clause 12 of the Letters Patent of the Bombay High Court has been set out. That clause is in pari materia with clause 12 of the Letters Patent of this Court. In paragraph 9 of that judgment, the Court set out its analysis of the clause in the following terms,

" Thus it is clear that under clause 12 of the Letters Patent the High Court in exercise of its ordinary original jurisdiction will have power to receive, try and determine (i) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of the High Court or (2) all other cases, (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (b) if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (c) If the defendants dwells or carries on business or personally work for gain within such limits "

5. It is thus clear that clause 12 refers only to two classes of case one suits relating to lands or other immovable properties, and the second, cases other than those relating to land or other immovable property. The dwelling of the defendant within the jurisdiction of the Court or the cause of action arising within the jurisdiction of the Court whether in whole or in part will be relevant only in cases where the subject matter of the suit is not land or other immovable property.

6. The decision of this Court in 1985 A.I.R. Madras page 1 must be held to have been impliedly overruled by the Supreme Court by the said judgment. We may also record that we do not find ourselves in agreement with the analysis of clause 12 made in the judgment of this Court reported in 1985 A.I.R. Madras page 1.

7. Clause 12 of the Letters Patent clearly refers at the first instance to "in the case of suits for land or other immovable property". It thereafter refers to "or in all other cases". The words "or in all other cases" refer to all cases and other than suits for land or other immovable property.

8. In this case the appellant had sought the relief of possession in the plaint filed by it. The suit was clearly one for land, and the land not being situated within the jurisdiction of this Court, the suit was not maintainable in this Court. The decision of the learned single Judge declining to grant leave was fully justified.

9. Learned counsel for the appellant drew our attention to certain observations of the Supreme Court in the case of Babu Lal vs. M/s. Hazari Lal Kishori Lal, (A.I.R. 1982 S.C. 818) in particular to the observations that the relief of possession is inherent in the relief for specific performance of the contract for sale. However, those observations are only obiter and cannot be regarded having laid down the law. In that case the

Court only pointed out that the relief of possession may not be required in cases where the person was already in possession.

10. The Supreme Court in the case of Adcon Electronics Pvt. Ltd. vs. Daulat, 2001 (7) SCC 698 also has dealt with this aspect directly and has pointed out that section 22(1) of the Specific Relief Act, 1963 is an enabling provision and that the plaintiff in a suit for specific performance may ask for further reliefs mentioned in sections (a) and (b) thereof. The Court went on to say that, "Clause (a) contains reliefs of possession and partition and separate possession of property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief on clause (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus, it follows that no Court can grant a relief for possession of land or other immovable property subject matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for."

11. The appeal is therefore dismissed. The plaint shall be returned to the appellant for re-presenting it in the Court which has the necessary jurisdiction. Copy of this order shall be furnished to the counsel for the appellant within the next two weeks to enable him to take the papers and present it in the appropriate Court which shall be done within six weeks from to-day.

Index : Yes
Website : Yes

To

The Sub Assistant Registrar, Original Side, High Court, Madras.

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